

Federal Deposit Insurance Corporation

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loan secured by a building or mobile home located or to be located in a special flood hazard area, the State savings association shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the State savings association's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) *Transfer of servicing rights.* The State savings association shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

APPENDIX TO SUBPART D OF PART 391— SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF AS- SISTANCE

We are giving you this notice to inform you that:

(a) The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

(b) The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

(c) Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

(d) The community in which the property securing the loan is located participates in

the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

- At a minimum, flood insurance purchased must cover *the lesser of*:

- (1) The outstanding principal balance of the loan; *or*

- (2) The maximum amount of coverage allowed for the type of property under the NFIP.

(e) Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

(f) Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Subpart E—Acquisition of Control of State Savings Associations

§ 391.40 Scope of subpart.

The purpose of this subpart is to implement the provisions of the Change in Bank Control Act, 12 U.S.C. 1817 (j) ("Control Act"), relating to acquisitions and changes in control of State savings associations that are organized in stock form.

§ 391.41 Definitions.

As used in this subpart and in the forms under this subpart, the following definitions apply, unless the context otherwise requires:

Acquire when used in connection with the acquisition of stock of a State savings association means obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, exchange, succession, or other means, including:

(1) An increase in percentage ownership resulting from a redemption, repurchase, reverse stock split or a similar transaction involving other securities of the same class, and

(2) The acquisition of stock by a group of persons and/or companies acting in concert which shall be deemed to occur upon formation of such group: *Provided*, That an investment advisor shall not be deemed to acquire the voting stock of its advisee if the advisor:

- (i) Votes the stock only upon instruction from the beneficial owner, and
- (ii) Does not provide the beneficial owner with advice concerning the voting of such stock.

Acquiror means a person or company.

Acting in concert means:

(1) Knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement, or

(2) A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

(3) A person or company which acts in concert with another person or company ("other party") shall also be deemed to be acting in concert with any person or company who is also acting in concert with that other party, except that any tax-qualified employee stock benefit plan as defined in 12 CFR 192.25 will not be deemed to be acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated.

Affiliate means any person or company which controls, is controlled by or is under common control with a per-

son, State savings association, or company.

Company means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, as defined in the definition of *similar organization* in this section; but a company does not include:

(1) The FDIC or any Federal Home Loan Bank, or

(2) Any company the majority of shares of which is owned by:

- (i) The United States or any State;
- (ii) An officer of the United States or any State in his or her official capacity;
- (iii) An instrumentality of the United States or any State; or
- (iv) A savings and loan holding company registered under section 10(b) of the Home Owners' Loan Act.

Controlling shareholder means any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors.

Immediate family means a person's spouse, father, mother, children, brothers, sisters and grandchildren; the father, mother, brothers, and sisters of the person's spouse; and the spouse of the person's child, brother or sister.

Management official means any president, chief executive officer, chief operating officer, vice president, director, partner, or trustee, or any other person who performs or has a representative or nominee performing similar policymaking functions, including executive officers of principal business units or divisions or subsidiaries who perform policymaking functions, for a State savings association or a company, whether or not incorporated.

Person means an individual or a group of individuals acting in concert who do not constitute a *company* as defined in this section.

Repealed Control Act means the Change in Savings and Loan Control

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Act, 12 U.S.C. 1730(q), as in effect immediately prior to its repeal by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Similar organization for purposes *company* as defined in this section means a combination of parties with the potential for or practical likelihood of continuing rather than temporary existence, where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

(1) The transferability and voting of any stock or other indicia of participation in another entity, or

(2) Achievement of a common or shared objective, such as to collectively manage or control another entity.

State savings association means a state-chartered savings association, building and loan, savings and loan or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the FDIC, and any corporation (other than a bank) the deposits of which are insured by the FDIC that the FDIC determines to be operating in substantially the same manner as a State savings association.

Stock means common or preferred stock, general or limited partnership shares or interests, or similar interests.

Uninsured institution means any financial institution the deposits of which are not insured by the FDIC.

Voting stock means:

(1) Common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interests, by statute, charter or in any manner, entitle the holder:

(i) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing State savings association or company); or

(ii) To vote or to direct the conduct of the operations or other significant policies of the issuer.

(2) Notwithstanding anything in this definition, preferred stock, limited

partnership shares or interests, or similar interests are not *voting stock* if:

(i) Voting rights associated with the stock, shares or interests are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the stock, security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the stock, security or interest, the dissolution of the issuer, or the payment of dividends by the issuer when preferred dividends are in arrears;

(ii) The stock, shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuer; and

(iii) The stock, shares or interests do not at the time entitle the holder, by statute, charter, or otherwise, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuer;

(3) Notwithstanding anything in this definition, *voting stock* shall be deemed to include stock and other securities that, upon transfer or otherwise, are convertible into voting stock or exercisable to acquire voting stock where the holder of the stock, convertible security or right to acquire voting stock has the preponderant economic risk in the underlying voting stock. Securities immediately convertible into voting stock at the option of the holder without payment of additional consideration shall be deemed to constitute the voting stock into which they are convertible; other convertible securities and rights to acquire voting stock shall not be deemed to vest the holder with the preponderant economic risk in the underlying voting stock if the holder has paid less than 50 percent of the consideration required to directly acquire the voting stock and has no other economic interest in the underlying voting stock. For purposes of calculating the percentage of voting stock held by a particular acquiror, stock or other securities convertible into voting stock or exercisable to acquire voting stock which are deemed voting stock under this paragraph (3) shall be included in calculating the amount of

voting stock held by the acquiror and the total amount of stock outstanding only to the extent of the voting stock obtainable by such acquiror by such conversion or exercise of rights.

§ 391.42 Acquisition of control of State savings associations.

(a) [Reserved]

(b) *Acquisition by a person or company.* Unless a transaction is exempt from prior notice under paragraph (d) of this section, no person or company (other than certain persons affiliated with a savings and loan holding company who are subject to §10(e)(4) of the Home Owners' Loan Act), shall acquire control, as defined in §391.43 (a) and (b), of a State savings association until written notice has been provided to the FDIC and (1) the FDIC indicates in writing its intent not to disapprove the proposed acquisition or (2) 60 days (or such period of time as the FDIC may specify if the review period has been extended under §391.45(c)(3)) have passed since receipt of a notice deemed sufficient under §391.45(c)(2). Notwithstanding the forgoing, acquisitions by persons or companies by means of a merger with an interim association are not subject to this subpart, but shall be subject to approval under §390.332, and either 12 CFR 152.13 or applicable state law.

(c) *Exempt transactions.* (1) [Reserved]

(2) The following transactions are exempt from the notice requirements of paragraph (b) of this section:

(i)(A) Control of a State savings association acquired by a bank holding company that is registered under and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company;

(B) Control of a State savings association acquired solely as a result of a pledge or hypothecation of stock to secure a loan contracted for in good faith or the liquidation of a loan contracted for in good faith, in either case where such loan was made in the ordinary course of the business of the lender: *Provided, further,* That acquisition of control pursuant to such pledge, hypothecation or liquidation is reported to the FDIC within 30 days, and *Provided, further,* That the acquiror shall not retain such control for more

than one year from the date on which such control was acquired; however, the FDIC may, upon application by an acquiror, extend such one-year period from year to year, for an additional period of time not exceeding three years, if the FDIC finds such extension is warranted and would not be detrimental to the public interest;

(C) Control of a State savings association acquired through a percentage increase in stock ownership following a *pro rata* stock dividend or stock split, if the proportional interests of the recipients remain substantially the same;

(D) Acquisition of additional stock after a non-disapproval under §391.46, or any predecessor provision, has been received: *Provided,* That such acquisition is consistent with any conditions imposed in connection with such approval and with the representations made by the acquirer in its application;

(E) Acquisitions of up to twenty-five percent (25%) of a class of stock by a tax-qualified employee stock benefit plan as defined in 12 CFR 192.25; and

(ii) Transactions for which approval is required under the Home Owners' Loan Act;

(iii) Transactions for which approval is required under 12 CFR 152.13 and 390.332;

(iv) Transactions for which a change of control notice must be submitted to the Board of Governors of the Federal Reserve System pursuant to the Change in Bank Control Act, 12 U.S.C. 1817(j);

(v) Acquisition of additional stock of a State savings association by any person who:

(A) Has held power to vote 25 percent or more of any class of voting stock in such association continuously since March 9, 1979; or

(B) Has maintained control of the State savings association continuously since acquiring control in compliance with the Control Act (or the Repealed Control Act) and the regulations thereunder then in effect: *Provided,* That such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its notice; and

(vi) [Reserved]